IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.684 OF 2001

Sadashiv Vithoba Mali,)
Age 36 years, Occ.Agriculturist,)
Resident of Vilaspur,)
Taluka Tasgaon, District Sangli.)
(At present, lodged in the)
Sangli District Prison, Sangli.)).. Appellant
(Org.Accused)

Vs.

The State of Maharashtra.).. Respondent

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Shri Shekhar A.Ingawale for the Appellant-accused.

Smt.Usha Kejariwal, APP for the Respondent-State.

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CORAM : N.V.DABHOLKAR &
SMT.V.K.TAHILRAMANI, JJ

DATED : 23RD FEBRUARY, 2006

ORAL JUDGMENT : (PER N.V.DABHOLKAR, J)

1. By judgment and order dated 9th July, 2001 in Sessions Case No.44 of 2000, the Additional Sessions Judge, Sangli, has convicted the appellant/accused and sentenced him to suffer rigorous imprisonment, pay fine of Rs.500/-, in default, rigorous imprisonment for one month. Feeling aggrieved by the conviction and sentence, the present appeal by the

accused.

2. According to the prosecution story, the incident took place on 17th November, 1999 at about 12.30 hours (noon). The victim of the incident Rajkumar was a teenage boy of 17 years and the son of complainant Chandrakant Mali (PW 1).

. Chandrakant is said to be a friend of Madhukar, real brother of the accused. The sketch of location brought on record at Exhibit - 22 shows that Chandrakant resides on the other side of the road in front of the house of Madhukar. On the day of incident, the victim Rajkumar was in the house of Madhukar and he was watching TV, it is said that the accused approached Rajkumar and informed him that TV at the place of the accused was not working properly and it was getting distorted picture. Rajkumar was requested to accompany and set the picture. Thereafter, the accused is said to have killed Rajkumar in his house. The accused shut the door and went away on his M-80 vehicle. The accused was seen taking Rajkumar to his place by Shobha, wife of Madhukar, because Rajkumar was taken from her residence. It is also claim of Shobha that she was present outside the house when the accused departed by M-80 vehicle, and according to Shobha, at that

time, there were blood stains on the shirt of the accused. Accused also warned Shobha not to open the door of his house. Shobha became sceptic due to these two circumstances. She called Lalasaheb Patil, brother of the complainant Chandrakant (Uncle of the victim). After both of them ascertained that Rajkumar was lying dead in the house, it is mystery as to who approached the police and how the police arrived on the scene.

. According to the complainant Chandrakant, his other son Kantilal came to inform him in the field that his son was beaten by the accused. Chandrakant returned home and by going to the residence of the accused, he confirmed the death of his son. It is the claim of Chandrakant that his complaint was recorded by the police at the spot itself, when the police had arrived at 4.00 p.m. Yet, the crime is registered at 2.25 p.m., as can be seen from the complaint (Exhibit-13).

. The investigation was carried and completed by API Waghmode, whereafter, filing of charge sheet, committal and trial followed, ending in conviction.

3. The prosecution has examined just six witnesses. PW 1 Chandrakant although complainant has

no personal knowledge. PW 2 Shobha, wife of Madhukar, and thus, sister-in-law of the accused, and PW 3 Manisha, a neighbour, are the star witnesses. As already described while narrating the prosecution story, Shobha is witness to the accused taking away the victim from her residence. She is also witness to departure of the accused with blood stained shirt. According to Manisha, she had seen the accused and the victim entering the house of accused at about 12.30 noon, and thereafter, she had also heard shrieks of the victim.

. One Sakharam K. Mali is examined as PW 5, and it is the claim of Sakharam that immediately after the incident, the accused visited him and while weeping and expressing repentance, accused made a confessional statement regarding murder of Rajkumar.

. PW 4 Lalasaheb is a panch witness. The blood stained clothes of the accused were seized vide panchanama Exhibit -17, in presence of this witness.

4. So far as the defence of the accused, he has claimed total denial and false implication. He has offered a detail explanation as to why the prosecution witnesses are deposing against him. According to him, father of Manisha is on enmical

terms with him. He has worked in Kerala since his childhood and by 1992, he had started his own shop. He was earning reasonably well in the business of gold and silver and was sending money to his village (relatives). According to accused, Madhukar was lavishly spending the amount and asking more and more money. He has given a four room house to Madhukar. He has purchased the land at the place of his father-in-law, and was intending to settle there, but in order to grab his estate, he has been falsely implicated. Therefore, Shobha is deposing false.

5. Heard Shri Ingawale, learned counsel for the appellant-accused and Smt.Kejariwal, the learned APP for the respondent -State. The submission of Shri Ingawale can be summarised in one sentence. He states that if there are circumstances on record which point out accusing finger towards the appellant, there are strong circumstances on record which point out accusing finger towards Madhukar also. According to him, in this case, based on circumstantial evidence, the trial Court has totally ignored this aspect, and therefore, has come to a wrong conclusion. According to the learned APP, finding of dead body in the house of accused, and the evidence rendered by Shobha as well as Manisha do not allow us to draw any other inference, except the

guilt of the accused.

6. Upon reference to the judgment of the trial Court, it appears that, for the reasons discussed in paragraph 7, the learned Judge has arrived at the conclusion that Rajkumar suffered homicidal death. Mainly reliance is placed on medical evidence. The victim is having as many as 12 injuries and except one, all are incised injuries located on the head, neck or shoulder. All the blows were thus aimed at vital part and weapon used is chopper (Koyata). The nature and location of the injuries rule out the possibility of injuries being accidental or suicidal. Although, the learned Judge has referred to some part of the other evidence for arriving at a conclusion that the death is homicidal (i.e. evidence which shows that body was found in the place occupied by the accused), such a reliance is not necessary to arrive at a conclusion that the death was homicidal. This is because the nature and location of injuries rules out accident or suicide.

. Having discussed the evidence of PW 2 Shobha, PW 3 Manisha and PW 5 Sakharam, the learned trial Judge arrived at a conclusion that following circumstances are established by prosecution with firmness, which lead to the conclusion that it must

be the accused who has murdered Rajkumar. The circumstances relied upon by the learned APP and accepted by the trial Court, can be enlisted as follows:-

(i) Shobha testified that accused had taken away the victim from her house;

(ii) Manisha had also seen the accused and victim going to the house of the accused, whereafter, she heard shrieks of victim, soon thereafter;

(iii) Death having occurred inside the house of the accused, it was analogous to custodial death; and

(iv) Extra judicial confession.

7. We have examined the evidence in the light of the bold stand taken by learned counsel for the appellant. In fact, such a defence is not being raised for the first time. It was suggested to Shobha during her cross-examination that Madhukar

(husband of Shobha and brother of accused) has killed Rajkumar, and accused is being framed with a false story and false evidence. It is, therefore, necessary to carry out close scrutiny of the evidence.

8. No doubt, PW 5 Sakharam claimed that accused had come to him on 17th November, 1999, at about 1.30 p.m., and accused was weeping. Accused expressed to him that he (accused) has spoilt himself. On further questioning, the accused confessed to have killed his neighbour by inflicting injuries on the neck.

. While accepting the extra judicial confession as trustworthy piece of evidence, the trial Court seems to have lost sight of the fact that Sakharam is a resident of Kavalapur and incident had taken place at Visapur. The two places are 25 kms. apart. It is not the claim of Sakharam that accused is related to him or is friendly with him or is a frequent visitor. When we refer to cross-examination of this witness, it is quiet clear that he is a got up witness. Although, initially, he has denied any knowledge of Lalasaheb Mali of Visapur (Uncle of the deceased), subsequently, he admitted that Lalasaheb is his distant relative. If at all the accused had confessed the guilt to this witness at the distance

of 25 kms., there was no clue for the police to know about such extra judicial confession. The mystery stands resolved by admission of Sakharam that Chandrakant and Lalasaheb had taken him to the police station for recording his statement.

. Unless a person, who claims to have heard extra judicial confession, satisfies the Court as to why he was in such a position, that the accused would be willing to make confession to him, the extra judicial confession is always required to be looked with doubt. Sakharam is neither a person friendly with the accused, much less a person in whom the accused would repose confidence either to save him or to give him some temporary shelter. We have not been able to rule out the possibility that extra judicial confession is an artificial piece of evidence.

. PW 3 Manisha was a school going girl, at the material time. She was studying in 7th standard. It is her claim that she saw the accused and the deceased going to the residence of the accused at about 12.30 noon, and thereafter, she heard shouts from the house of the accused. Her school hours were 11.00 a.m. to 5.00 p.m. By referring to the calender, learned counsel for the appellant has submitted that 17th November, 1999 was a Wednesday,

and there was no public holiday. The chances of Manisha being at home, therefore, are minimum. The presence of Manisha or her having witnessed the events, which she claims, is doubtful from other angle. Manisha has described no reaction on her part. After hearing the shouts, she does not shout for help, she does not go to the residence of the accused due to curiosity, and as rightly pointed out by learned counsel for the appellant, it is also not her claim that she had seen the accused coming out from the house and going away on M-80 vehicle, as was seen by PW 2 Shobha. If Manisha was a genuine witness, she also could have seen the accused departing, and therefore, presence of Shobha in front of her house. Admittedly, Manisha proceeded to her field, after the incident. Although, her statement was recorded on the same day, she had not narrated the incident to anybody on that day, although her mother and cousin sister were at home.

9. Lastly, we come to the evidence of Shobha, who is wife of Madhukar, i.e. brother of the accused. We intend to reproduce certain admissions from the cross-examination of Shobha.

"My husband is running panpatti shop in my village. We have constructed new house

having four rooms. It is correct to say that Sadashiv had incurred the expenses for construction. He had also purchased some agricultural land in the village in the name of my husband."

"It is true to suggest that since last 2 years there are cross-terms in between my husband and accused-Sadashiv. Sadashiv had purchased nine acres of agricultural land at Kavathe-ekand, and he has constructed a bungalow there. It is correct to suggest that the elderly persons from our community tried to pacify the dispute between Madhukar and Sadashiv. It is correct to suggest that accused was demanding share in house and landed property. It is correct to say that my husband was saying that his share be relinquished and middlemen were also saying the same."

. On comparison with the admissions quoted hereinabove, and reference to the statements of the accused under Section 313 of the Code of Criminal Procedure, 1973, it is evident that Shobha has accepted all the claims of the accused, so far as the property matters are concerned. It appears that the

accused has earned money. He had purchased and given the house to Madhukar. He had purchased the land in the name of Madhukar and when he asked share in it, Madhukar desires that accused should waive it, because the accused has also purchased land for himself at Kavathe-ekand (place of his father-in-law).

. Learned counsel for the appellant has also referred to some more admissions of Shobha in order to substantiate his argument that Madhukar had motive to kill the child Rajkumar, whereas, the accused had none. The prosecution has not been able to suggest reasonable motive for accused to kill Rajkumar. It is suggested that accused believed complainant Chandrakant to be on the side of his brother Madhukar in the property dispute, and therefore, in order to teach a lesson to the complainant Chandrakant, accused has murdered his child. There is no evidence to establish such frame of mind of accused. On the contrary, following admissions of Shobha indicate that Shobha and her husband had some immediate cause for being wild with the deceased:-

"My daughter Dhanashri is about ten years. ..... Rajkumar is

failed in 10th standard."

"Rajkumar used to visit my house frequently, and he was talking with Dhanshri. It is true to suggest that I myself and husband were not liked (did not like) on this count. It is not true to suggest that I had scolded my daughter and said that she should not talk with deceased Rajkumar."

. It is admitted by the complainant Chandrakant that there is TV in his house. If that be so, there was no reason for Rajkumar to come to the house of Shobha for watching cricket match, and anger of Shobha and her husband Madhukar towards the accused because of his visit under the pretext of watching TV was justifiable.

. That dead body was found in the house of accused was a very strong circumstance and in the ordinary course, we would have considered that circumstance to be more than weighty than all other minor points. Eventually, it is evident that the part of house described as house of the accused is not in his exclusive possession, and it is also not inaccessible to Madhu or his family members. On

reference to sketch at Exhibit - 22, it is evident that there is a total construction of four rooms in East-West direction. There is 10 feet wide road to the West of the house and first two rooms are in possession of Madhukar. Other two rooms are shown as house of the accused. It is evident from the sketch, that along the southern wall of the house, there is entrance between all consecutive rooms. Thus, if extreme western room, adjacent to the road, is taken as first room and extreme eastern room is taken as fourth room of the house, there is door in the walls between room Nos.1 and 2, 2 and 3 and 3 and 4. The common wall between Room Nos.2 and 3 separates the parts of the house, described as house of Madhukar and house of accused. The Room Nos.2 and 3 also have exit door in the lane to the South of the house. Thus, it is evident that although the accused has separate exit, the house under occupation of the accused is also accessible to the members of the family of Madhukar. The cross-examination of Shobha on this count reads thus:-

> "Front rooms are in my possession and in the rear room, my parents-in-law were residing. As and when visit to our house, he (accused) is residing in the backside room. When my parents-in-laws

were living that time there was a wooden frame who have ingress & egress."

. Shobha also admits that all four rooms are in her possession. Even, according to the admission by the complainant Chandrakant, the access from the premises occupied by Madhukar to the premises occupied by the accused was possible only by removing the cupboard. Thus, part of the house occupied by the accused can be approached without coming out in the lane from the house of Madhu, is evident by the sketch as also admission of the complainant Chandrakant.

. Chandrakant has admitted in h cross-examination that there was no previous enmity between him and the accused, which rules out the possibility of any motive for the accused to kill the son of the complainant- Chandrakant.

10. Last but not the least, it is the claim of Shobha that when accused came out from his house, she saw him wearing a shirt, which was blood stained. The panchanama (Exhibit-17) regarding seizure of clothes of the accused also shows that the shirt of the accused is blood stained, but not the pant. On reference to report of forensic science laboratory

(Exhibit - 19), it is evident that shirt of the accused, which is article 12, is not having any blood stains. Although, according to the report, his pant has some blood stains. It is the evidence of Shobha that she suspected foul play because she saw blood stains on the shirt of the accused. The report of laboratory falsifies Shobha as also the panchanama, and thus, once again exposes dishonesty on the part of the investigating agency.

11. For the reasons discussed hereinabove, we feel that the evidence of Shobha and Manisha is not convincing. The extra judicial confession heard by Sakharam is patently artificial, and therefore, the prosecution cannot claim that the circumstances relied upon are proved with firmness. The prosecution is also not supported by strong motive for the accused to commit murder. The prosecution, at the most, can be said to have reached at such a stage where it can create suspicion of accused having committed the murder, but it has failed to prove the guilt beyond reasonable doubt. The appeal, therefore, succeeds.

12. The appeal is allowed. The judgment and order dated 9th July, 2001 delivered by the Additional Sessions Judge, Sangli, in Sessions Case

No.44 of 2000 is quashed and set aside. The appellant is acquitted of the charge for an offence punishable under Section 302 of the Indian Penal Code. He be set to liberty forthwith, if not required in any other cases.

. The Registrar (Judicial) shall ensure early despatch of appropriate writ to the prison authorities, since the appellant, at present, is in jail.

(V.K.TAHILRAMANI,J) (N.V.DABHOLKAR,J)